



ANTI-CORRUPTION DIGEST

July 2017

Keeping ahead of global anti-corruption trends is critical in today's business markets. The Dorsey Anti-Corruption Digest, which puts global trends at your fingertips, puts you ahead. The deep experience of the Dorsey Anti-Corruption team, drawn from the DOJ, the SEC and years in private practice, will keep you ahead.

NORTH AMERICA

THE UNITED STATES

Linde Pays \$11 Million in First Corporate FCPA Enforcement Action under Trump

In a June 16 letter, the DOJ declined to bring FCPA charges against Linde North America Inc., a subsidiary of the Linde Group, citing the DOJ's FCPA Pilot Program. The firm agreed to pay \$11.2 million in connection with a DOJ declination.

The DOJ investigation centered on bribes paid to Georgian state officials to obtain equipment and other assets used to produce boron. A DOJ investigation found that executives at Spectra Gases Inc., a New Jersey-based company that Linde acquired in 2006, had been bribing officials at a company owned by the Georgian government, National High Technology Center. The Spectra executives were under an agreement with Linde whereby

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they would stay with the company for three years after the acquisition in order to ensure the company hit its financial targets, according to the DOJ. The executives, however, did so by bribing their way past competitors, funneling up to 75 percent of the profits from the gas operations back to foreign officials.

The DOJ cited six factors for its decision to close the investigation, including Linde's timely self-disclosure, the comprehensive investigation conducted by Linde and the steps the firm took and "continues to take" to enhance its compliance program and internal controls. The DOJ also cited an agreement to pay \$7.8 million in disgorgement of tainted profits and a forfeiture of \$3.4 million in corrupt payments that the company intercepted after suspecting the wrongdoing.

CDM Smith Secures DOJ Declination

Boston-based contractor CDM Smith received the second declination letter this month, which it received on June 29, ending the FCPA investigation into the firm. The inquiry related to bribes paid to Indian government officials to win highway construction supervision and design contracts as well as a water project contract. CDM Smith made \$4 million in profit from the contracts it won through the bribes and will pay that money to the DOJ in disgorgement. The DOJ said that the company's employees and agents, as well as CDM India, a wholly owned subsidiary, paid \$1.18 million in bribes between 2011 and 2015. The bribes were between 2-4 percent of the contract price and were paid through fraudulent subcontractors who provided no actual services. All of the senior management at CDM India were aware of the bribes.

The declination is part of the FCPA Pilot Program, announced in April 2016, which gives companies incentives to self-disclose, cooperate, and remediate FCPA violations in exchange for up to a 50 percent discount on fines they could face under the sentencing guidelines. The DOJ said its decision to close this investigation was based on a number of factors, including the company's voluntary self-disclosure, thorough and comprehensive investigation, full cooperation, agreeing to disgorge illegal profits, steps taken to enhance its compliance program and internal controls, and its full remediation.

U.S. Supreme Court Limits SEC Disgorgement Actions

In a unanimous decision to resolve a circuit split, the Supreme Court ruled that any claim for disgorgement in an SEC enforcement action must be commenced within five years of the date the claim accrued in accord with the dictates of Section 2462 of Title 28. *Kokesh v. Securities and Exchange Commission*, No. 16-529 (U.S.) (opinion published June 5, 2017). The Court concluded that disgorgement is a penalty within the meaning of Section 2462.

The Petitioner, Charles Kokesh, misappropriated \$34.9 million of investors' funds between 1995 and 2006. In a 2009 enforcement action, the SEC sought and obtained the full \$34.9 million as disgorgement. Mr. Kokesh appealed on the grounds that the disgorgement was either a "penalty" or "forfeiture" within the meaning of the statute. As a result of the Court's opinion, the amount of the ordered disgorgement must be trimmed dramatically, to roughly \$2.4 million, covering only Mr. Kokesh's conduct commencing in 2004. The ruling, coupled with the Court's earlier decision in *Gabelli v. SEC*, 568 U.S. 442 (2013), will delimit the reach of SEC enforcement.

Former State Street Corp Executive Expected to Plead Guilty in Corruption Scandal

Richard Boomgaardt, formerly an executive at State Street Corporation, a Boston-based financial services holding company, is expected to plead guilty on July 12, 2017 to conspiring to commit wire fraud and securities fraud. *U.S. v. Boomgaardt*, No. 17-cr-10167 (D. Mass.) (filed June 6, 2017). A plea agreement was filed on June 8, 2017. The charges implicate three ex-State Street executives who allegedly conspired to add secret commissions on billions of dollars of trades. The charges are based on a scheme in which State Street executives had traders falsely inflate the commissions charged to clients. Those charges were then concealed, according to prosecutors.

In January, the bank agreed to pay \$64.6 million to resolve U.S. criminal and civil investigations stemming from the alleged wrongdoing. In addition to Mr. Boomgaardt, Edward Pennings, a former senior managing director in State Street's London office, agreed to plead guilty to one count of conspiring to commit wire fraud and securities fraud. Mr. Pennings entered his plea on June 28. Prosecutors also charged Ross McLellan, a former executive vice president. Mr. McLellan has pleaded not guilty to securities fraud and wire fraud charges. His trial is scheduled for October.

Former Guatemalan Judge Trujillo Pleads Guilty to Fraud in FIFA Corruption

A former Guatemalan judge who previously served as general secretary of Guatemala's soccer federation has been implicated in the continuing global FIFA corruption probe. *United States v. Webb et al.*, No. 1:15-cr-00252 (E.D.N.Y.) (filed May 20, 2015). Hector Trujillo pleaded guilty in New York on June 2, 2017 to wire fraud and conspiracy charges.

Mr. Trujillo admitted to accepting hundreds of thousands of dollars in bribes between 2009 and 2016 from a Florida-based sports marketing company in exchange for help providing media and marketing rights for qualifier matches for the 2018 and 2022 World Cups. Mr. Trujillo has agreed not to contest any sentence of less than four years and nine months in prison. He faces up to 20 years in prison on each count.

Mr. Trujillo is one of at least 42 people and entities charged as part of the U.S. investigation into the FIFA corruption scandal, which allegedly included more than \$200 million in bribes and kickbacks to soccer officials. FIFA suspended the Guatemala Football Association in October 2016 and banned Brayan Jimenez, the former president of the Guatemala association, for life in April, after he pleaded guilty to racketeering and wire fraud.

Swiss Bank Director Admits to Money Laundering in FIFA Case

Jorge Luis Arzuaga, a former managing director at the Swiss bank Julius Baer, pleaded guilty to money laundering conspiracy in federal court in New York in June. *U.S. v. Arzuaga*, No. 17-cr-313, (E.D.N.Y.) (filed June 12, 2017). Mr. Arzuaga, a citizen of Argentina who worked for the Zurich bank until 2015, is the first banker to admit guilt in the U.S. investigation, which has increasingly focused on the financial institutions through which bribe money traveled. Mr. Arzuaga admitted to arranging the financial transfers of more than \$25 million in bribes and kickbacks from an Argentinian sports marketing company to soccer officials. He also admitted to helping disguise the ownership of offshore accounts to move illicit money, making false statements on bank documents and doctoring agreements to make the transactions appear legitimate. In return, Mr. Arzuaga received bonuses ranging from \$200,000 to \$450,000. In connection with the plea, Mr. Arzuaga agreed to forfeit \$1 million, which he said

represents the bonuses he received. The former banker faces up to 20 years in prison.

Russian Subsidiary of Teva Pharmaceutical Pleads Guilty to FCPA Charge

Teva LLC (Russia) pleaded guilty to a bribery scheme involving payments to Russian government officials in violation of the FCPA on June 16th. *United States v. Teva LLC (Russia)*, No. 1:16-cr-20967 (S.D. Fla.) (filed December 22, 2016). Teva ignored repeated concerns surrounding the president of its Russian distributor in the hope that the official could use his position to influence the Russian government to increase sales. According to the SEC, Teva quickly signed a deal with the official after Russia announced an initiative to buy all pharmaceutical products from local producers by 2020. The official also allegedly threatened to damage Teva's market share in Russia if it did not sign on to the deal. Teva's Russian subsidiary omitted several key facts when the agreement was reviewed by the company's FCPA approval process, including that the Russian official was under investigation for corruption.

The plea follows the pharmaceutical products giant's December agreement with the DOJ to pay a criminal penalty of \$283 million in connection with a deferred prosecution agreement and an additional payment of \$236 million to settle civil charges filed by the SEC. At the same time, Teva's Russian subsidiary signed a plea agreement with the DOJ to plead guilty to criminal charges.

Delaware Chancery Dismisses Qualcomm Stockholder Bribery Suit

Delaware's Chancery Court dismissed a stockholder suit seeking damages from former directors on behalf of Qualcomm tied to FCPA charges. *In re: Qualcomm Inc. FCPA Stockholder Derivative Litigation*, No. CA-11152 (Del. Ch.) (decided June 16, 2017).

The stockholder lawsuit relied on evidence gathered by the SEC before it imposed a \$7.5 million fine on the company in March 2016 to resolve FCPA charges. *In the Matter of Qualcomm Incorporated*, Adm. Proc. File No. 3-17145 (Mar. 1, 2016). That action included claims that a Qualcomm executive personally provided a \$70,000 loan to a Chinese official's son in addition to allegations that the firm provided frequent meals, gifts and entertainment without any business purpose to officials.

The Chancery Court ruled that the class suit failed to support any of the claims of fiduciary duty breaches, unjust enrichment, and waste of corporate assets. The court stated that while "[t]he corporation may very well have a claim against the employees who provided unauthorized gifts to foreign officials," absent any "particularized allegations tying the bribery to the board, the directors are competent to decide whether Qualcomm should pursue that claim." The court concluded that there was "no indication that the board believed Qualcomm could continue to violate the FCPA without consequences... and no allegations suggest that the Qualcomm board consciously disregarded the red flags."

DOJ Seeks \$1.8 Billion in Assets from 1Malaysia Development Bhd Fund

High-level officials at 1Malaysia Development Berhad (1MDB), a strategic development company wholly owned by the Government of Malaysia, diverted more than \$4.5 billion from the fund in order to purchase lavish assets, including art works, jewelry, and film rights, in addition to stakes in yet other assets, such as a \$260 million luxury yacht, according to the DOJ. *U.S. v. Certain Rights to and Interests in the Viceroy Hotel Group*, No. CV 17-4430 (C.D. Cal.) (filed June 15, 2017). This is the latest development in the ongoing political scandal in Malaysia that has reached the country's Prime Minister, Najib Tun Razak. In 2015, Prime Minister Razak was accused of

channeling over \$700 million from the fund to his personal bank accounts.

The June 15 DOJ complaint lists a number of items subject to seizure, including a Park Avenue condominium, diamond jewelry, a Pablo Picasso painting, shares of fitness club operator Fly Wheel Sports Inc., and rights to the 2014 film “Dumb and Dumber To.” Jho Low, a Malaysian financier with ties to Prime Minister Razak, has been involved in a number of the illicit purchases, according to prosecutors.

Among the assets Mr. Low was involved with, the \$2.2 billion takeover of a Houston energy company – Coastal Energy Co. – has garnered increased scrutiny. Coastal was ultimately purchased by Mr. Low in a joint venture with a Spanish energy unit of International Petroleum Investment Co., Abu Dhabi’s sovereign wealth fund. Mr. Low invested \$50 million in illicit funds obtained from the 1MBD and funneled through yet another company, Strategic Resources Global, according to prosecutors. A June 7 DOJ complaint alleges that Strategic Resources Global received a \$300 million return in one week on the \$50 million investment. The commercial basis for the significant return on investment was not immediately clear, according to the Justice Department. The fund has denied any wrongdoing and has said it will cooperate with the investigations.

Consultant in Och-Ziff Capital FCPA Probe Sentenced to Prison

Samuel Mebiame, the son of former Gabon Prime Minister Leon Mebiame, was sentenced to two years in prison on May 31, 2017 following his guilty plea to conspiring to violate the FCPA in connection with the Och-Ziff Capital investigation. *U.S. v. Samuel Mebiame*, No. 16-CR-00627-NGG (E.D.N.Y.) (filed Dec. 9, 2016). Och-Ziff and CEO Daniel Och previously agreed to pay \$412 million and \$2.17 million, respectively, to resolve FCPA charges.

Mr. Mebiame received at least \$3.5 million for his work as a middle man in connecting the hedge fund Och-Ziff to African government officials. He admitted to bribing officials in exchange for business opportunities, including a mining contract. In the plea documents, Mr. Mebiame admitted that at least five senior officials in three countries – Niger, Chad and Guinea – received corrupt payments and various illicit benefits. Specifically, he supplied cash and cars to two officials in Niger, a Mercedes Benz and private jet to a Guinean official and travel expenses for an advisor to Chad’s president.

U.S. District Court Judge Nicholas G. Garaufis was critical of the Justice Department’s handling of the case. At the sentencing hearing, Judge Garaufis noted the difference in Mr. Mebiame’s representation as compared to the bigger fish involved in the Och-Ziff scandal: “I think it’s really ironic that in the other cases . . . the room was filled with lawyers, high-priced lawyers from major law firms. This Defendant shows up at the door of the IRS without any representation. And I have a real concern about whether he had a real understanding of the potential consequences.”

Judge Garaufis rejected the DOJ’s five year sentencing recommendation and instead sentenced Mr. Mebiame to two. The court expressed concern with the DOJ’s frequent approach of zeroing in on one individual and urging the judge to make an example of that person.

SEC Chairman Clayton Names Enforcement Co-Directors

On June 8, 2017, newly appointed SEC Chairman John Clayton named Steven Peikin and Stephanie Avakian as co-directors of the agency’s enforcement division. Mr. Peikin is a former federal prosecutor and was a colleague of Mr. Clayton at Sullivan & Cromwell LLP. At the firm, Mr. Peikin served as managing director of its criminal defense and

investigations group. Ms. Avakian has been serving as Acting Director.

EUROPE

THE UNITED KINGDOM

SFO Charges Barclays and Four Former Execs with Fraud

The Serious Fraud Office (“SFO”) charged Barclays Plc and four former executives with criminal fraud tied to the market crisis on June 20, 2017. The executives charged along with the bank are: CEO John Varley, Roger Jenkins, former Executive Chairman of Investment Banking and Investment Management in the Middle East; Thomas Kalaris, former Chief Executive of Barclays Wealth and Investment Management; Richard Boath, former European Head of Financial Institutions Group. This is the first time that a major international bank or its executives have been charged criminally for actions related to the market crisis.

The charges stem from the bank’s capital raising arrangements with Qatar Holding LLC and Challenger Universal Ltd. in June and October 2008. Through the transactions, the bank obtained a loan of about \$15 billion, which allowed Barclays to survive the financial crisis without a government bailout. Other major banks were propped up at the time through U.K. taxpayer loans arranged by the Government.

Each defendant was charged with conspiracy to commit fraud by false representation in violation of section 1 and 2 of the Fraud Act 2006 and section 1(1) of the Criminal Law Act 1977 in relation to the June 2008 capital raise. In addition, Barclays and Messrs. Varley and Jenkins were charged with fraud by false representation in relation to the October 2008 raise as well as unlawful financial assistance in violation of section 151 of the Companies

Act 1985. The defendants will appear before Westminster Magistrates’ Court on July 3, 2017.

SFO’s Outlook Improves

The plan to merge the SFO reported as under consideration in last month’s Digest appears to have waned in the wake of the most recent U.K. election results and the filing of the Barclays charges, discussed above. Although the Conservative party pledged to merge the SFO into the National Crime Agency in its pre-election manifesto, the plan was notably absent from the Queen’s Speech on June 21, 2017. The Financial Times reported that several lawyers and politicians understood the plan to dismantle the SFO had been dropped.

DOJ Sends Prosecutor to SFO

The DOJ sent an anti-corruption prosecutor to work with the U.K.’s SFO and Financial Conduct Authority for two years, according to a recent Department announcement. This is the first time the DOJ’s criminal division has sent a prosecutor to work fulltime with a foreign agency on financial crime matters. The move was announced by Acting Principal Deputy Assistant Attorney General Trevor McFadden in a speech on May 24, 2017, in which he also highlighted the increased growth in foreign collaboration in bribery and corruption investigations. Mr. McFadden noted that since 2012, there has been a 147% rise in the number of foreign requests for U.S.-based evidence and a 75% increase in requests from the U.S. to its foreign counterparts.

New Global Pact to Fight Tax Evasion

A set of rules regarding international tax avoidance was worked out by the Group of 20 and Organization for Economic Co-operation and Development (“OECD”) on June 7. The U.S. did not join the group of 60 countries. The OECD estimates that, globally, between

\$100 billion to \$240 billion is lost annually through tax avoidance by corporations and individuals. The multilateral agreement, signed by the U.K., Japan, and France, among others, has the effect of revising the roughly 3,000 bilateral tax treaties worldwide.

India Fugitive Denies Fraud in U.K. Court

Vijay Mallya, a citizen of India, denied any wrongdoing to a London Court where he appeared over an extradition request from India on June 13, 2017. Mr. Mallya fled India in 2016 after defaulting on a \$1 billion loan with a state-owned bank and amidst allegations that he misused funds. Mr. Mallya is known for his extravagant lifestyle: he globalized Kingfisher beer, ran a now-defunct airline, and was director of an Indian Premier League cricket team. Mr. Mallya currently resides in a \$15 million mansion in Hertfordshire, England.

Former EBRD Banker Sentenced to Six Years in Jail

Andrey Ryjenko, a former banker at the European Bank for Reconstruction and Development, was sentenced to six years in jail for accepting bribes of over \$3.5 million. A top U.K. court found that Mr. Ryjenko conspired to make or accept corrupt payments between July 2008 and November 2009 in his role vetting applications for investment from eastern European oil, gas and mining firms.

Mr. Ryjenko had an agreement with a U.S.-based consultant he introduced to the firms to help with their loan applications. Under the arrangement, the consultant paid Mr. Ryjenko 50% of the commission he earned when the loan was approved. The consultant would pay the money into the account of Mr. Ryjenko's sister (who was charged but later declared unfit to stand trial).

In addition to the bribery conviction, Mr. Ryjenko was also found guilty of money laundering by concealing, disguising,

converting and transferring criminal property. The two year sentence for that conviction will run concurrently with the six year sentence for the bribery conspiracy. The U.S.-based consultant, Dmitrij Harder, pleaded guilty to two counts of violating the FCPA in 2016.

SFO Reviewing FIFA World Cup Bidding Report

The Telegraph reported that the SFO confirmed that it is reviewing the report regarding the bidding for the next two world cup locations. FIFA released the full "Garcia report" one day after it was leaked to the German newspaper Bild. Both the DOJ and Swiss authorities have launched criminal actions into the wake of the FIFA scandal.

UKRAINE

Ukrainian Judge Under Investigation

Artur Yemelianov, a prominent Ukrainian judge is currently under investigation for corruption. In 2008, Mr. Yemelianov awarded a 49 year lease to a company owned in part by his then-wife, creating what could be an impermissible conflict of interest. The company at issue, Dreamwood, applied for a lease in 2007. The municipality holding the lease declined to grant the lease, saying it could only be legally transferred in an auction. Dreamwood challenged the municipality's decision, and Mr. Yemelianov presided over the case. Contrary to the municipality's decision, he concluded there was no legally required auction. Investigators are determining whether the transaction violates the Ukrainian rule against deciding cases where a relative is involved or a judge's impartiality is otherwise cast into doubt. Judge Yemelianov denies the conflict of interest, arguing his then-wife was not a stake holder at the time he presided over the case and that if she had been, he "would have recused."

Judge Yemelianov was suspended from January to April of 2017 under an investigation against him related to how commercial law cases are allocated to judges. The investigations into Mr. Yemelianov are part of the larger Ukrainian effort to drive out corruption.

FRANCE

Investigation of Former French Prime Minister Balladur

Former French Prime Minister Edouard Balladur is under investigation by the Commission of Inquiry at the French Court of Justice in connection with the financing of his 1995 presidential campaign. Mr. Balladur is alleged to have received kickbacks on arms contracts with Pakistan—his signature appears on an arms sale contract with Pakistan in 1994. The inquiry arose out of an investigation into a 2002 terrorist attack in Karachi, Pakistan, which killed 15 people, including 11 French workers from the Naval Construction Office.

Government Official Charged with Siphoning Public Money

Teodoro Obiang, the son of the president of Equatorial Guinea, is on trial in what is the first case in France to be brought after an investigation into the French assets of three African leaders leading a lavish lifestyle abroad while their citizens are impoverished. If convicted, Mr. Obiang faces up to 10 years in prison and up to a fine of €50 (about US\$57 million). He is accused of directing more than €200 million (US\$225 million) for personal use. Mr. Obiang is claiming immunity from prosecution. The trial is expected to last until early July.

ROMANIA

Romanian Parliament Ousts Prime Minister for Anti-Corruption Policy

On June 18, 2017, the controlling leftist members of the Romanian Parliament filed a motion against Sorin Grindeanu, the Prime Minister of Romania. Mr. Grindeanu refuses to relax Romanian anti-corruption rules and senior members of the Social Democrat Party are facing corruption charges.

SPAIN

Anti-Corruption Chief Prosecutor Quits After Four Months

Manuel Moix, the anti-corruption prosecutor in charge of investigating members of Spain's ruling party, quit after only four months. The resignation followed the revelation that Mr. Moix owned a 25% stake in an offshore Panamanian company, which he inherited from his father. Public prosecutor Jose Manuel Maza defended Mr. Moix's denial of wrongdoing, confirming that the ownership interest is not illegal.

MIDDLE EAST

ISRAEL

Fraud Investigation of Interior Minister Continues

The Israeli anti-corruption police unit questioned Israeli Interior Minister Aryeh Deri as part of an ongoing investigation into a range of fraud charges on June 14, 2017. Police began investigating Mr. Deri in April 2016 and expect the inquiry to continue for several months. The investigation is focusing on

issues relating to money laundering, fraud, breach of trust, and tax evasion. Police have arrested fourteen people in connection with this probe, including Israeli-Georgian businessman and philanthropist Mikhael Mirilashvili and other senior officials from the Ministry for the Development of the Negev and Galilee (headed by Mr. Deri). Mr. Deri served a prison sentence from 2000 to 2002 for bribery offenses that occurred during the 1990s.

Israeli Anti-Fraud Unit Interviews in Prime Minister Netanyahu's Corruption Investigation

On June 26, 2017, Israeli police from the Anti-Fraud Unit interviewed Sheldon Adelson, a U.S. casino billionaire, in relation to a corruption investigation of Israeli Prime Minister Benjamin Netanyahu. Mr. Adelson was a major Netanyahu campaign donor. The Netanyahu investigation centers around two cases. The first case involves allegations that Mr. Netanyahu held private meetings with one Israeli newspaper regarding reducing competition in the news sector in exchange for more positive coverage. The second case involves allegations that Prime Minister Netanyahu received expensive gifts from Arnon Milchan, an Israeli-U.S. Hollywood producer. The chief of police in March announced that the Netanyahu investigations were in the "final stages."

QATAR

Claims of Corruption Surround Successful 2022 World Cup Bid

German media, Bild newspaper, reported on June 26, 2017, that it obtained previously redacted information from a FIFA ethics report, which indicates Qatar's bidding for the 2022 World Cup may have be the result of corruption and bribery. A 2014 independent FIFA investigation report cleared Qatar of corruption allegations. That 2014 report was

the 42 page "legally appropriate" version. Bild claims to have access to the unredacted 403 page report which it says details that three FIFA executives were flown to a party in Rio by a private Qatari federation jet before the vote for the 2018 and 2022 bids. Additionally, others who have seen the full report have commented that it does not contain absolute proof that Qatar bribed FIFA for the 2022 bid, but rather the report opens the door to more questions about wrongdoing in international soccer.

ASIA

CHINA

Chinese President Xi Jinping's Anti-Corruption Campaign

For the last four years, President Xi's sweeping anti-corruption campaign has brought down top officials in the government, the military, and other companies. More than 1 million officials have been prosecuted. Those include:

- Wang Baoan, the former Chief of the National Bureau of Statistics, was found guilty of corruption and sentenced to life in prison on May 31, 2017. A court found that Mr. Wang illegally accepted more than \$22.5 million from 1994 to 2016 while holding various financial positions in the government.
- Song Lin, former Resources Holdings Co. chairman was sentenced to 14 years and fined 4 million Chinese Yuan (US\$587,000) for stealing public assets worth over 9.74 million Chinese Yuan (about US\$1.4 million) on June 1, 2017. Mr. Song previously pleaded guilty to accepting more than 23 million Chinese Yuan (over

US\$3.3M) in bribes between 2004 and 2013.

- Deng Qilin, former Chairman of Wuhan Iron and Steel, was sentenced to fifteen years in prison for taking over 55.4 million Chinese Yuan (over US\$8 million) in bribes on June 2, 2017. Between 2000 and 2015, in exchange for accepting bribes, Mr. Deng obtained business favors, construction projects, and promotions.
- Shanghai's Former Deputy Secretary, Dai Halbo was sentenced to serve nine years in prison for bribery on June 2, 2017. The court also confiscated illegal profits and imposed a fine of 2 million Chinese Yuan (approximately US\$300,000). Over a seven year period beginning in 1998 Mr. Dai accepted more than 9.9 million Chinese Yuan (US\$1.44 million) when he held various positions, including Deputy Secretary for the Shanghai municipal government. Mr. Dai also opened and did not report bank, stock, and fund accounts with Citibank Hong Kong in April 2001.
- Top Parliament Advisor, Sun Huaishan, has been charged with engaging in corrupt practices and inappropriately speaking about Communist Party policies on May 31, 2017. The charges were lodged by the Central Commission for Discipline Inspection based on an investigation that began in March of this year. The Commission stated that Mr. Sun accepted money and gifts, attended banquets paid for with public funds, asked organizations to provide holidays with public money, and used his power to help influence his son's business operations.

INDIA

Delhi Jeweler's Assets Frozen

Ashwani Kumar Mehra, a Delhi based jeweler, and his family are the first to have imposed on them an asset freeze order by the Indian Enforcement Directorate (ED), tied to the April 2016 "Panama Papers" probe. The Panama Papers investigation exposed off-shore companies converting remittances into interest-free loans to companies located in the British Virgin Islands (BVI).

Mr. Mehra and his family have registered seven off-shore firms in the BVI and Bahamas, nominating their flagship company (PTC Group Limited) as either secretary or shareholder of each of the other firms. The Mehra's family is said to have moved money between these offshore companies and granted interest-free loans to members of the family.

Four Bribery Arrests in India

The Central Bureau of Investigation arrested Colonel Shaibal Kumar (of the planning and engineering branch of the Indian Army), managing director Sharat Nath, director Vijay Naidu, and representative Amit Roy (of Xtech Equipments Pvt Limited, Pune) for criminal conspiracy on June 17, 2017. The charges arise in connection with bribes for a supply of power pack rock splitters used by various field formations of the Army.

Magistrate Judge in India Implements "Jail Tourism" Program

A magistrate judge in India has taken an innovative approach to deterring corruption by sending government officials on "jail tourism." The program is designed to give officials a glimpse into the experiences of an inmate and provide them with an opportunity to interact with other government employees serving

time. In just one day, the judge “sent 576 government officials to visit jail . . . so that they share the experience of inmates The objective is that they should know the experience of those behind bars and ultimately deter them not to indulge in corrupt practice which might invite a similar fate for them[.]”

INDONESIA

Former Indonesian Minister Sentenced to Four Years

The Jakarta Corruption Court in Indonesia sentenced former health minister Siti Fadilah Supari to four years in prison after finding her guilty of accepting bribes in the state-funded procurement of medical equipment on June 16, 2017. Ms. Siti Fadilah caused the state to lose about 6 billion Indonesian Rupiah (US\$450,180) and is said to have accepted bribes in the form of traveler’s checks from Sri Wahyuningsih, the finance director of PT Graha Ismaya, and from the same company’s president director, Masrizal Achmad Syarif.

SINGAPORE

Fines for Bribery in Obtaining Ship Repair Contracts

Ong Teck Liam, Singapore Technologies Marine’s former group financial controller, was fined \$300,000 for her role in one of the largest corruption scandals in Singapore’s corporate history on June 5, 2017. Singapore Technologies Marine provides shipbuilding, ship conversion and ship repair services. The investigation began in 2014. Ms. Ong is the last of seven senior executives convicted. Between 2000 and 2011, Singapore Technologies Marine is said to have paid at least \$24.9 million in bribes—falsely claimed as entertainment expenses—in return for ship repair contracts. Singapore Technologies Marine’s financial department was guided on processing, preparing, and disbursing the false expenses. Specifically, a document

detailed how to process these illicit transactions without being detected, instructing that claimed amounts should not be in exact or round figures and that checks should not be issued in running order.

Former Assistant Director of Resorts World Sentosa Jailed

Alex Ong Boon Chaun was sentenced to 22 weeks in jail and ordered to pay a penalty of \$39,000 after being convicted of five charges of receiving bribes. Mr. Ong Boon Chaun received bribes ranging between \$1,000 and \$16,000 from a director at Mecflou to ensure progress payments were made to Mecflou on time.

SOUTH KOREA

South Korea Fines Novartis’ Subsidiary

South Korea recently fined a Swiss pharmaceutical company, Novartis (Novartis Korea), \$48.3 million for illegally inducing doctors to prescribe its drugs. Novartis Korea attempted to sidestep South Korea’s rebate bans by disguising payments as travel, conferences, lecture fees, marketing events, educational seminars, and medical studies. The Korean authorities also banned sales of twelve variations of three drugs effective March 17 through June 16, 2017. Novartis’s 2016 annual report, states that 1,701 misconduct cases have been reported involving company employees, with 893 claims substantiated. In August of 2016, six Novartis employees in South Korea were indicted in over illegal practices to increase sales of the company’s drugs. These actions follow a series of similar events. For example, in March 2016, Novartis paid the SEC \$25 million to settle charges that it violated the FCPA for similar doctor prescription bribes in relation to its two China-based subsidiaries.

Samsung Bribery Trial Update: No Smoking Gun

Billionaire Jay Y. Lee, the heir to the Samsung Group, is currently on trial for accusations of bribing former President Park Geun-hye for approval of a contentious merger between Samsung C&T Corp. and Cheil Industries Inc.

Mr. Lee was arrested in February and has denied all bribery charges. The trial has already featured thousands of pages of documentary evidence and hundreds of hours of witness testimony. The presiding judge, Kim Jin-dong, has convened hearings almost three times a week, one of which endured past 1:00 a.m. in an effort to move the proceeding forward. To date no direct evidence has been found, although the South Korean Supreme Court has upheld bribery charges based only on circumstantial evidence. The trial is expected to continue for months and should include the much anticipated testimony of the former President who was impeached last December.

AFRICA

NIGERIA

Nigeria Anti-Corruption Agency Investigates Speaker of House

The Economic and Financial Crimes Commission is investigating Yakubu Dogara, Speaker of the House of Representatives, on allegations that he illegally altered entries in Nigeria's 2016 budget after it was passed by Parliament. This investigation is part of a larger battle—Nigeria's endemic corruption—which President Muhammadu Buhari has promised to combat.

SOUTH AFRICA

Umgeni Water Suspends Chief Executive During Investigation

The Umgeni Water's board has suspended its Chief Executive, Cyril Gamede, pending an investigation into corruption allegations. The corruption allegations arise from an anonymous letter sent to Umgeni Water stakeholders, the Minister of Water and Sanitation, the provincial commissioner of police, and others. Umgeni Water—which supplies water to six municipalities and six million customers—is currently under investigation by an independent agency.

South African President Involved in Improper Contracts

More than 100,000 documents leaked to South African media suggest that South African President Jacob Zuma and his business friends' dealings in lucrative government contracts is tied to improper actions relating to undue influence on government by private business interests, termed "state capture." The African National Congress (ANC) stated it was "gravely concerned" by the information it received. The President and the Gupta family, wealthy Indian-born businessmen whose companies have contracts with state-owned firms, have denied similar allegations in the past. Mr. Zuma recently announced that a judicial commission has been established to inquire into the state capture allegations.

Graft Ombudsman Mounts a Challenge to President Zuma

South Africa's graft ombudsman recently announced that she will oppose a lawsuit filed by President Jacob Zuma aimed to overturn a report alleging that he breached the government's code of ethics in dealing with the prominent Gupta family. The allegations suggest that President Zuma and his

constituents allowed the Guptas to influence the appointment of cabinet members and give them special treatment in purchasing a coal mine. Mr. Zuma and the Gupta family deny any wrongdoing. A formal investigation continues.

LATIN AMERICA

BRAZIL

Former Tourism Minister Arrested

Brazil's former Minister of Tourism, Henrique Eduardo Alves, was arrested on corruption charges on June 6. One charge relates to his involvement with the construction of a soccer stadium in Brazil for the 2014 World Cup. Police claim that contracts for the construction were inflated by \$23.4 million (77 million Brazilian Reals) to fund bribes to lawmakers. A second charge is tied to a claimed fraud at a state run bank (Caixa Economica Federal), Brazil's largest mortgage lender.

President Temer Charged with Bribery

On June 26, 2017, a federal prosecutor in Brazil charged Brazilian President Michel Temer with taking multimillion dollar bribes in connection with Brazilian meatpacking company JBS S.A. (discussed separately below). The next step in Brazilian law requires a two thirds majority vote in the lower house of Congress, on whether to allow the top tribunal to try Mr. Temer on the bribery charges.

President Temer replaced President Dilma Rousseff, who was impeached just over a year ago. Mr. Temer, one third of his cabinet, four former presidents, and dozens of lawmakers are under investigation or have already been charged in the corruption schemes engulfing Brazil's political elite.

J&F Investimentos Agrees to Record \$3.2 Billion Fine

J&F Investimentos, parent of JBS S.A., the world's largest meat-packing company (both Brazilian companies), agreed to pay \$3.2 billion in corruption fines on May 31, 2017. This corruption penalty surpasses the record \$2.6 billion fine set by Brazilian Construction firm Odebrecht.

Joesley and Wesley Batista, co-owners of the firm, resigned from the JBS Board and testified under a plea bargain. The brothers admitted to paying over 600 million Brazilian Real (US\$179,869,602) to bribe politicians. Joesley Batista also claimed that Brazil's President, Michel Temer, heads the "largest and most dangerous organization" in Brazil. In support of this claim he gave prosecutors an audio tape on which the President appears to condone bribery.

The Brazilian Supreme Court has approved an investigation into the allegations against the President. Police arrested Rodrigo Rocha Loures, a former Congressman and Presidential aide on June 5, 2017. Officials allege that the former Congressman served as an intermediary in connection with a bribe paid to President Temer.

Odebrecht Related Arrests in Ecuador

Five individuals were recently arrested and several companies were raided in Ecuador during an investigation into Odebrecht, a Brazilian construction company that has been entangled in a corruption scandal. The day prior to these arrests, Chief Prosecutor Carlos Baca met with the Attorney General of Brazil to receive information obtained in plea bargains. Although names of the arrested individuals have not been officially released, local media reported that one arrestee was Ricardo Rivera, the uncle of Ecuador's Vice President Jorge Glas.

AUSTRALIA

Former TZ Director Detained for Illicit Payments

John Falconer, former secretary and director of TZ Ltd., has been detained in Thailand pending extradition to Australia. Mr. Falconer

is expected to face charges following an Australian Securities and Investment Commission (ASIC) relating to illegal payments to TZ senior directors. Mr. Falconer's recent detention is the latest in a string of legal issues for the blemished businessman, including a 2010 ruling from the NSW Supreme Court finding that the allegations against Falconer in his roles at TZ were "serious and involve large sums[.]"

RECENT ARTICLES OF NOTE

Kevin M. LaCroix, "FCPA Follow-On Civil Actions: Frequently Filed, Less Frequently Successful," available at The D&O Diary. Mr. LaCroix's article looks at shareholder derivative lawsuits filed after a company announces an FCPA investigation or lawsuit and why, although frequently filed, they are less frequently successful. He uses the Qualcomm case to illustrate the point. The recently dismissed Qualcomm lawsuit was filed after the SEC announced a cease-and-desist against the company in 2016 for FCPA violations. The article can be found [here](#).

Dass, Nishant and Nanda, Vikram K. and Xiao, Steven Chong, "Is There a Local Culture of Corruption in the U.S.?" available at SSRN. This article examines whether U.S. public corporations which are headquartered in more corrupt states, measured by corruption by local officials and perceptions of corruption, display a greater propensity for corruption. It can be downloaded [here](#).

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This update is provided for general informational purposes and is not intended to constitute advice. If you require advice on any of the matters raised in this update, please let us know and we will be delighted to assist.

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